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Before the
Federal Communications Commission
Washington, D.C. 20554

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In the matter of)
Lambda Communications, Inc.)
Petition for Rulemaking)
to Apply Expanded Interconnection)
Obligations to the)
Puerto Rico Telephone Company)

RM. No. 8708

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COMMENTS OF CELLULAR COMMUNICATIONS OF PUERTO RICO, INC.

Cellular Communications of Puerto Rico, Inc. ("CCPR") submits these comments in response to the Petition filed by Lambda Communications, Inc. ("Lambda") on September 29, 1995. CCPR is a Delaware Corporation which, through wholly and majority-owned entities, operates the nonwireline cellular systems in 11 of the 12 MSAs and RSAs in the Commonwealth of Puerto Rico and an island-wide common carrier paging system. Accordingly, CCPR is an interested party in this proceeding.

In its petition, Lambda complains that the Puerto Rico Telephone Company ("PRTC") has been able to refuse to provide expanded interconnection to Lambda by virtue of its status as the sole Tier 1 Local Exchange Carrier ("LEC") that is a member of the National Exchange Carrier Association ("NECA") pool for filing and supporting interstate access tariffs.

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CCPR has experience dealing with PRTC in access issues because, as a Commercial Mobile Radio Service ("CMRS") provider, CCPR must establish connections to the public switched telephone network in Puerto Rico, where PRTC is the monopoly provider. From CCPR's experience, three points must be considered in this rulemaking.

- 1) PRTC has a statutory monopoly in certain communications services in the Commonwealth and its rates are higher than those of other LECs in the United States.
- 2) PRTC has unique financial advantages because of its status as a government entity.
- 3) Because it is a branch of the Commonwealth government, PRTC is effectively self-regulating; there is no effective forum in which Lambda, CCPR, or other carriers can protest PRTC's intrastate abuses.

I. PRTC HAS A TELECOMMUNICATIONS MONOPOLY.

The Commonwealth's telecommunications statute,¹ referred to in Puerto Rico as "Law 25," attempts to create a statutory monopoly on all communications services in the territory: telephone, telegraph, radio, and cable.² Federal law has

¹ P.R. Laws Ann. Tit. 27.

² P.R. Laws Ann. Tit. 27 §§ 402 and 403(b).

preempted the statute in several areas. Only because of this preemption is CCPR able to provide cellular service and an affiliate of Lambda able to provide cable service in Puerto Rico. However, the Commonwealth continues to enforce Law 25 wherever it can, beyond the reach of federal preemption. Thus, only PRTC may provide intrastate telecommunications lines in Puerto Rico. The result of this lack of competition has been inordinate delay in the delivery of monopolized telecommunications services as well as unreasonable rates for such services. As an example, the average wait for installation of a leased T-1 trunk line, even in the San Juan metropolitan area, is more than a year. Additionally, although the Commission's policy and rules require PRTC to provide access to its local exchange network to CMRS providers such as CCPR, the Commission does not regulate the rates for such interconnection unless they are so high that they effectively preclude interconnection.³ Thus, although a reasonable estimate of the actual incremental cost of providing interconnection is approximately 0.20 cents per minute⁴ and the nationwide average for interconnection rates is between 2.50 and 3.50 cents per minute,⁵ PRTC charges CCPR 6.00 cents per minute.

³ Competition and Efficient Use of Spectrum for Radio Common Carrier Services, 2 FCC Rcd 2910, 2912 (1987).

⁴ Gerald W. Brock, *The Economics of Interconnection*, April, 1995, published by Teleport Communications Group, Staten Island, New York.

⁵ Source: Cellular Telecommunications Industry Association.

II. PRTC HAS UNIQUE FINANCIAL ADVANTAGES.

As Lambda pointed out, because PRTC is wholly owned by the Puerto Rico Telephone Authority ("PRTA"), it has the benefits of fully tax-free municipal bonds⁶ and access to low-interest financing from the Puerto Rico Government Development Bank.⁷ PRTC is exempted by law from paying taxes to the Commonwealth.⁸ Although it must make payments to a special fund in lieu of paying taxes to the Commonwealth, the payments that PRTC makes are much less than it would pay as taxes if it were a private carrier. Additionally, as government entities, PRTC and its affiliates are exempt from fees for filings with the Commission and from the annual federal regulatory fees.⁹ Furthermore, while PRTC's CMRS competitors, including CCPR and Lambda's affiliate in the Personal Communications Service, must slog through a dense and expensive bog of regulatory restrictions, applications, and hearings before they may construct facilities, the same requirements do not seem to be an impediment to PRTC. The resulting head start can be a potent weapon in competition and a financial windfall.

⁶ See P.R. Laws Ann. Tit. 27 § 413.

⁷ Lambda Petition at 21.

⁸ P.R. Laws Ann. Tit. 27 § 411.

⁹ 47 C.F.R. § 1.1113(f); Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, 9 FCC Rcd 533, ¶¶ 15-16 (1994) (finding PRTC exempt from regulatory fees).

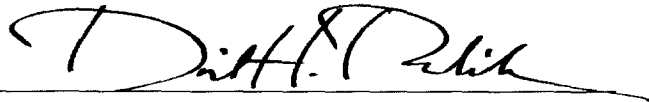
III. THE COMMONWEALTH OF PUERTO RICO IS BOTH REGULATOR AND COMPETITOR.

PRTC is the only commercial telecommunications provider under the American flag that is a division of a state government. Because of its status, it does not need approvals from Commonwealth regulators such as the Puerto Rico Public Service Commission. Consequently, its abilities to use inherent advantages to attempt to stifle competition, such as the entry of competitive access providers, go unchecked by any regulatory commission. PRTC's competitors stay in business by providing cost-effective services to consumers with less delay and the flexibility to appreciate and satisfy their customers' needs. In contrast, PRTC and its affiliates use the powers of government and immunity from regulation to establish a head start and to hinder the advent of competition wherever possible. There is no effective or objective forum in which to protest PRTC's abuses when they are directed at purely intrastate matters. Thus, it is especially anticompetitive for PRTC to be able to use its participation in the NECA pool as one more method of discouraging competition.

CCPR respectfully requests that the Commission consider the information provided in these comments as it makes its decision regarding Lambda's petition.

Respectfully submitted,

CELLULAR COMMUNICATIONS OF PUERTO RICO, INC.

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